

CENTER FOR DISABILITY ACCESS
Ray Ballister Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

Steve Lee Robinson, in his
individual and representative
capacity as trustee of the Robinson
Living Trust;
Barbara Denise Robinson, in her
individual and representative
capacity as trustee of the Robinson
Living Trust;
Douglas F. Lech; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Samuel Love complains of Defendants Steve Lee Robinson, in his individual and representative capacity as trustee of the Robinson Living Trust; Barbara Denise Robinson, in her individual and representative capacity as trustee of the Robinson Living Trust; Douglas F. Lech; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property owners, business operators, lessors and/or lessees for the U-Haul dealer ("U-Haul") located at or about 34395 Mission Trail, Wildomar, California.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5. Pursuant to pendant jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.

2
3 **FACTUAL ALLEGATIONS:**

4 7. The Plaintiff went to the U-Haul in February of 2015 to rent a trailer
5 hitch.

6 8. The U-Haul is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 9. Parking spaces are one of the facilities, privileges and advantages
9 offered by defendants to their customers at the U-Haul.

10 10. Unfortunately, although parking spaces are one of the facilities
11 available to patrons of the U-Haul, there were no accessible parking spaces
12 available for persons with disabilities.

13 11. Plaintiff alleges that there used to be an accessible parking space in the
14 lot for persons with disabilities. Unfortunately, the parking space has been
15 allowed to fade or get paved over. Because of defendants' lack of
16 maintenance and care, the accessible parking space designed for use by
17 persons with disabilities is no longer available.

18 12. Defendants have no policy or procedure in place to make sure that the
19 accessible parking spaces remain useable in the parking lot. As such, the
20 parking space reserved for persons with disabilities is no longer suitable for
21 use by plaintiff.

22 13. The plaintiff personally encountered this problem. This inaccessible
23 condition denied the plaintiff full and equal access and caused him difficulty
24 and frustration.

25 14. Plaintiff would like to return and patronize the U-Haul but will be
26 deterred from visiting until the defendants cure the violation. Plaintiff lives in
27 Riverside County and shops and travels within the County on a regular basis.
28 He would like to return to this U-Haul.

1 15. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 16. Given the obvious and blatant violations, the plaintiff alleges, on
5 information and belief, that there are other violations and barriers on the site
6 that relate to his disability. Plaintiff will amend the complaint, to provide
7 proper notice regarding the scope of this lawsuit, once he conducts a site
8 inspection. However, please be on notice that the plaintiff seeks to have all
9 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
10 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
11 he can sue to have all barriers that relate to his disability removed regardless
12 of whether he personally encountered them).

13 17. Additionally, on information and belief, the plaintiff alleges that the
14 failure to remove these barriers was intentional because: (1) these particular
15 barriers are intuitive and obvious; (2) the defendants exercised control and
16 dominion over the conditions at this location and, therefore, the lack of
17 accessible facilities was not an “accident” because had the defendants
18 intended any other configuration, they had the means and ability to make the
19 change.

20
21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
22 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
23 defendants (42 U.S.C. section 12101, et seq.)

24 18. Plaintiff repleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 19. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
 2 who owns, leases, or operates a place of public accommodation. See 42
 3 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
 5 or procedures, when such modifications are necessary to afford
 6 goods, services, facilities, privileges, advantages, or
 7 accommodations to individuals with disabilities, unless the
 8 accommodation would work a fundamental alteration of those
 9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
 11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 12 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 13 Appendix “D.”
- 14 c. A failure to make alterations in such a manner that, to the
 15 maximum extent feasible, the altered portions of the facility are
 16 readily accessible to and usable by individuals with disabilities,
 17 including individuals who use wheelchairs or to ensure that, to
 18 the maximum extent feasible, the path of travel to the altered
 19 area and the bathrooms, telephones, and drinking fountains
 20 serving the altered area, are readily accessible to and usable by
 21 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

22 20. Any business that provides parking spaces must provide handicap
 23 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
 24 every eight of those handicap parking spaces but not less than one must be a
 25 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
 26 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
 27 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

28 21. Here, the lack of a compliant, accessible parking space is a violation of

1 the law.

2 22. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 23. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7 24. Given its location and options, the U-Haul is a business that the
8 plaintiff will continue to desire to patronize but he has been and will continue
9 to be discriminated against due to the lack of accessible facilities and,
10 therefore, seeks injunctive relief to remove the barriers.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
14 51-53)

15 25. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint.

18 26. Because the defendants violated the plaintiffs' rights under the ADA,
19 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
20 Code § 51(f), 52(a).)

21 27. Because the violation of the Unruh Civil Rights Act resulted in
22 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
23 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
24 55.56(a)-(c).)

